SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 863

THE AKRON & BARBERTON BELT RAILROAD COMPANY, et al., *Petitioners,*

v.

BROTHERHOOD OF RAILROAD TRAINMEN, ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, SWITCHMEN'S UNION OF NORTH AMERICA, AND BILL DOAK LODGE DIVISION 584, BROTHERHOOD OF RAILROAD TRAINMEN, *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled case on July 31, 1967.

Opinions Below

Petitioners are 178 railroads which filed a complaint for declaratory judgment and injunctive relief against respondents in the United States District Court for the District of Columbia. The District Court issued a pre-trial opinion concerning certain general issues of law involved in the

case which is reported at 250 F. Supp. 691 and is set forth in Appendix A hereto. After a final hearing upon a stipulated record with respect to all of the respondents except the Order of Railway Conductors and Brakemen (ORC&B), the District Court issued a second opinion which is reported at 252 F. Supp. 207 and is set forth in Appendix B hereto. After a final hearing upon a stipulated record with respect to the ORC&B, the District Court issued a third opinion which is reported at 253 F. Supp. 538 and is set forth in Appendix C hereto. A motion for supplemental relief by certain carriers against the Brotherhood of Railroad Trainmen (BRT) resulted in a fourth opinion by the District Court which is reported at 254 F. Supp. 306 and is set forth in Appendix D hereto.

Both sides appealed from the various orders entered by the District Court (except that only the BRT appealed from the order on the motion for supplemental relief), which appeals were heard and decided togther in an opinion dated May 12, 1967 and a supplemental opinion dated July 31, 1967.[1] Those opinions have not yet been officially reported, but are unofficially reported at 55 CCH Labor Cases ¶ 11,912 and 56 CCH Labor Cases ¶ 12,095, and are set forth in Appendices E and F hereto.

Jurisdiction

The judgment of the Court of Appeals, set forth in Appendix G hereto, was entered on July 31, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

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[1] Those opinions also relate to appeals from another District Court proceeding between the carriers and the Brotherhood of Locomotive Firemen and Enginemen which involved the firemen's aspects (Article II) of Award 282. A petition for rehearing and for clarification filed by the carriers in that case was denied on September 21, 1967. Appendix H hereto. The carriers expect to file a petition for writ of certiorari in that case within 90 days from that date.

By order dated October 19, 1967, the Chief Justice extended until November 28, 1967 the time in which this petition may be filed.

Questions Presented

Article III of the Award by Arbitration Board No. 282 (Appendix I hereto) pursuant to Public Law 88-108 (77 Stat. 132) provided, among other things, that no "change shall be made in the scope or application of rules in effect immediately prior to the effective date of this Award . . . which require a stipulated number of trainmen . . . in any class of road service . . . or which require a stipulated number of brakemen or helpers in any class of yard, transfer, or belt line service . . ., except by agreement, or pursuant to the provisions of this Award." Article III also established a procedure, commencing with written notices of proposed changes, whereby such rules could be modified by agreement or by an award of a special board of adjustment "pursuant to the provisions of this Award." The period during which Article III of the Award "shall continue in force" expired as of the end of January 25, 1966.

1. Could a union party to the Award serve carrier parties to the Award with notices of proposed changes in rules requiring a specified number of trainmen, brakemen or helpers under Section 6 of the Railway Labor Act (45 U.S.C. § 156), rather than under Article III of the Award, and require the carriers to bargain upon such notices during the period prior to the expiration of the Award, when such notices proposed that the changes become effective after the expiration of the Award, or were those notices premature so as not to become effective under Section 6 of the Railway Labor Act until after the expiration of the Award?

2. Do the procedures established by Article III of the Award affect "rates of pay, rules, or working conditions"

within the meaning of those terms as used in Section 6 of the Railway Labor Act, so that such procedures continue to apply after the expiration of the Award until changed in accordance with Section 6 of the Railway Labor Act?

3. Where proceedings to change rules requiring a specified number of trainmen, brakemen or helpers were initiated under Section III of the Award prior to the expiration of the Award, may such proceedings be completed after expiration of the Award?

4. Does Section 8 of the Norris-LaGuardia Act (29 U.S.C. § 108) apply to a temporary restraining order issued to restrain a threatened strike allegedly in violation of the Railway Labor Act pending a hearing on a motion for preliminary injunction?

Statutes Involved

Public Law 88-108, Sections 5 First, 6, 7, 8 and 9 of the Railway Labor Act, and Sections 1, 4, 7, 8 and 9 of the Norris-LaGuardia Act are set forth in Appendix J hereto.

Statement of the Case

In 1959, the overmanning of trains resulting from obsolete work rules having little or no relation to actual manpower needs in the light of technological developments constituted a serious problem. See *Brotherhood of Locomotive Eng.* v. *Baltimore & Ohio R. Co.*, 310 F. 2d 503, 505-506 (7th Cir., 1962), aff'd, 372 U.S. 284 (1963); *Railroad Passenger Train Deficit*, 306 I.C.C. 417, 480 (1959). On or about November 2, 1959, in an effort to overcome this problem, most of the nation's railroads served the unions representing their operating employees with notices under Section 6 of the Railway Labor Act (45 U.S.C. § 156). While a number of proposals were made, the two relevant here sought, in general, to eliminate all rules requiring the

use of firemen on diesel locomotives in freight and yard service and all rules which required the use of a stipulated number of trainmen (such as brakemen and helpers) in road and yard service, and to leave those matters to managerial discretion. On or about September 7, 1960, the unions served the railroads with Section 6 notices of counterproposals which, among other things, would generally require the use of a fireman on all locomotives and the use of two brakemen or helpers on all road and yard crews. JA 3-4, 14-17, 19-20.[2]

A Presidential Railroad Commission was appointed by the President on an *ad hoc* basis to investigate the dispute and use its best efforts to bring about a settlement (JA 5, 20). In its February 26, 1962 Report to the President, the Commission recommended generally (p. 7) that "the rules governing the manning of engines and trains and the assignment of employees be revised to permit the elimination of unnecessary jobs and at the same time to safeguard the interests of the individual employees adversely affected." Detailed recommendations in that regard were made (Report, at 35-50, 53-60) and were accepted by the carriers, but rejected by the unions. H. Rept. No. 713, 88th Cong., 1st Sess., 7. After the validity of the carriers' proposals was upheld in litigation brought by the unions, *Locomotive Engineers* v. *B. & O. R. Co.*, 372 U.S. 284 (1963), the President appointed an emergency board under Section 10 of the Railway Labor Act (45 U.S.C. § 160). The recommendations of the emergency board generally paralleled those of the Commission, and were accepted by the carriers but rejected by the unions. H. Rept. No. 713, *supra* at 7.

The report by the emergency board exhausted the proce-

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[2] "JA" references are to the Joint Appendix in No. 20152 below, unless otherwise indicated.

dures of the Railway Labor Act and, following the expiration of 30 days, the carriers were free to implement their proposals and the unions were free to strike or engage in other self help. *Locomotive Engineers* v. *B. & O. R. Co., supra* at 291. When it became apparent that a disastrous nationwide railroad strike was imminent, the President proposed preventive legislation and the Congress responded by enacting Public Law 88-108 (77 Stat. 132). Under that legislation, the two key issues concerning the rules governing the use of firemen and train crew consists were submitted to arbitration in accordance with the procedures established by Sections 7 and 8 of the Railway Labor Act (45 U.S.C. §§ 157, 158), and the arbitration award was to constitute a "complete and final disposition" of the portions of the Section 6 notices raising those issues (P.L. 88-108, §§ 3, 4). The validity of the Award by Arbitration Board No. 282 was upheld in *Brotherhood of Loc. Fire. & Eng.* v. *Chicago, B. & Q. R. Co.*, 225 F. Supp. 11 (D. D.C., 1964), aff'd *per curiam*, 331 F. 2d 1020 (D.C. Cir., 1964).

With respect to the use of firemen, the Award, in general, modified the existing rules so as to permit the eventual elimination of all but 10% of the regular assignments on diesel locomotives in freight and yard service and to provide generous separation allowances and other protections for existing firemen. Pursuant to those provisions, the carriers reduced the numbers of firemen in their employ by some 18,000, paid separation allowances amounting to more than $36,000,000, and provided comparable jobs to some 1200 former firemen (JA 142-143).

With respect to the crew-consist issue, Board 282 found that the existing "myriad of local arrangements has led to numerous inconsistencies in the manning of crews," that "some of the existing rules, originating as they did

more than a half-century ago, are anachronistic and do not reflect the present state of railroad technology and operating conditions," that "some overmanning exists in road and yard crews as a result of schedule rules and local agreements," and that, although "the evidence of undermanning is less persuasive, we must also acknowledge this possibility on some assignments." *Opinion of Neutral Members,* 41 Labor Arbitration 680, 693-694 (1963). The Board found that the the parties had reached tentative agreements which would largely dispose of this issue (*id.*, at 695-696), and Article III of the Award, "[e]xcept for minor modifications, . . . reflects each one of these tentative agreements, both in matters of approach and in matters of substance" (*id.*, at 696).

Article III (App. I, at 104a-109a) established a procedure whereby, in general, written notice could be given of proposed changes in rules requiring a specified number of trainmen, the interested carrier and union conferred and attempted to reach agreement upon any changes to be made, and either party could submit the dispute to a special board of adjustment (consisting of one carrier member, one union member and a neutral member) for final decision pursuant to "guidelines" specified in the Award if no agreement was reached. No trainmen could be separated from employment pursuant to the Award, and trainmen in active service as of the effective date of the Award were to be retained in road or yard service until they retired, were discharged for cause or otherwise were removed from employment by natural attrition.

Section 4 of P.L. 88-108 provided that Award 282 "shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise." Article IV of the Award (App. I, at

110a) provided that the "Award shall continue in force for two years from the date it takes effect, unless the parties agree otherwise." January 25, 1966 was the last day of that two-year period insofar as the crew-consist provisions of the Award are concerned (JA 9, 22). Pursuant to those provisions, the railroads were authorized to discontinue some 7500 crew-consist positions when not needed to provide employment to protected employees, as a result of 92 agreements and 83 special board awards executed at various times between May of 1964 and January 25, 1966. When the Award expired on January 25, 1966, about half of those assignments had been eliminated and it was estimated that the remainder would be completely eliminated in from two to four years through attrition of the protected employees. Proceedings before four special boards of adjustment established under the Award were pending when the Award expired. JA 62-75, 142.

Prior to the expiration of the Award, the BRT served some 85 of the railroads, under Section 6 of the Railway Labor Act, with notices of a proposal to require the use of at least two brakemen or helpers on all crews in road and yard service effective January 26, 1966 (JA 78, 116-119).[3] In March of 1965, some 10 months prior to the expiration of the Award, the ORC&B served some 54 railroads, under Section 6 of the Railway Labor Act, with notices of a proposal to require two brakemen on train crews in road service (JA in No. 20,158, at 76-78). The carriers took the position that such notices were premature and refused to bargain about the merits of the unions' proposals prior to the expiration of the Award (JA in No.

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[3] Most of those carriers and several others served the Brotherhood with notices of a counterproposal, without waiving their position that such notices were premature when served under the Railway Labor Act prior to the expiration of the Award (JA 79, 107-112).

20,158, at 78-79; JA in No. 20,229, at 193-306).[4] In some instances, the unions sought to invoke the services of the National Mediation Board prior to the expiration of the Award (*ibid.*).

In addition to the dispute over the prematurity of the Section 6 notices served prior to the expiration of Award 282, the parties were in dispute concerning the effect of the expiration of the Award. In general, the carriers contended that the modifications in their agreements and rules made by or pursuant to the Award continued to apply after expiration of the Award until changed in accordance with the Railway Labor Act, while the unions contended that the agreements and rules in effect prior to the Award were restored upon expiration of the Award. On January 7, 1966, the Brotherhood of Railroad Trainmen made a formal demand upon many of the carriers that "immediately upon expiration of the Award of Arbitration Board 282 at 12:01 A.M., January 26, 1966, [they] proceed to take the necessary steps to arrange" for restoration of the prior rules and agreements (JA 10, 23).

Shortly thereafter, petitioners filed their complaint for a declaratory judgment and injunctive relief against the respondent unions.[5] The jurisdiction of the District Court was invoked under 28 U.S.C. §§ 1331, 1337, 2201 and 2202. A temporary restraining order against strikes by the union

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[4] The ORC&B did not represent road brakemen on 44 of the carriers, and those carriers also took the position that the notices were invalid and non-bargainable for that reason (JA in No. 20,158, at 78, 83-86). The parties stipulated that the issue would not be litigated in this proceeding, but could be raised in another proceeding, and the issue was not considered by the courts below (JA 81, 173-174).

[5] The firemen's provisions of the Award did not expire until March 31, 1966. Consequently, the issues raised by the expiration of those provisions were the subject of a separate proceeding in the District Court, although the appeals therefrom were heard and decided by the Court of Appeals together with the appeals involved here. See fn. 1, p. 2, *supra*.

pending hearing on a motion for a preliminary injunction was entered and, with the consent of the parties, extended for some time (JA 35-40). However, the parties eventually agreed to submit the case for final decision upon the basis of a stipulated record, and the carriers did not further press their prayer for injunctive relief. Accordingly, the District Court issued a declaratory judgment setting forth its rulings upon the legal issues involved (JA 175-181; JA in No. 20,158, at 167-174; JA in No. 20,229, at 317-319). In general, that Court held: (1) that the modifications in the crew-consist rules made by agreements or by special board awards pursuant to the procedures established by Award 282 continued to apply after expiration of the Award until changed in accordance with the Railway Labor Act, as did the protections afforded by the Award to crew-consist employees; (2) that the procedures established by the Award for changing crew-consist rules terminated upon expiration of the Award and could neither be initiated nor completed thereafter; and (3) that the Section 6 notices served prior to the expiration of the Award were premature and did not become effective under the Railway Labor Act until the day after the Award expired.

All parties appealed. The Court of Appeals affirmed the first two rulings and affirmed the third insofar as the Section 6 notices served by the ORC&B were concerned, but reversed the third ruling insofar as the Section 6 notices served by the BRT were concerned. The Court of Appeals also held that the temporary restraining order was invalid insofar as it applied to the BRT (but not insofar as it applied to the other unions) by reason of Section 8 of the Norris-LaGuardia Act (29 U.S.C. § 108). A number of other issues, which are neither raised in this petition nor necessary to an understanding of the issues raised here, also were ruled upon by the lower courts.

Reasons for Granting the Writ

In P.L. 88-108, the Congress provided for arbitration of the crew-consist and firemen issues raised by the 1959 and 1960 Section 6 notices in accordance with the provisions of the Railway Labor Act. One must look to the Railway Labor Act, therefore, to determine the conseqnences of the expiration of the two-year period in which the arbitration award remained in effect. While this generally was recognized by the court below and it correctly held that the changes in substantive crew-consist rules effected by agreement or by special-board awards pursuant to Award 282 continued to apply after expiration of the two-year period by virtue of the Railway Labor Act until changed in accordance with that Act, the court below erred in failing to recognize that certain other consequences flowed from the adoption by the Congress of the arbitration provisions of the Railway Labor Act to settle the dispute. In particular, the court erred in failing to recognize that the procedures for changing substantive crew-consist rules established by Award 282 also continued after expiration of the two-year period by virtue of the Railway Labor Act until changed in accordance with that Act and in failing to recognize that the effect of the two-year period was to establish a moratorium during which the parties could not be required to bargain under the Railway Labor Act about crew-consist proposals.[6] In addition, the court erred in holding that Section 8 of the Norris-LaGuardia Act applied to the temporary restraining order against the BRT entered by the District Court. The issues thus raised are important to the administration of the Railway Labor Act and the

[6] Similar erroneous rulings were made by the Court below with respect to the firemen's aspect of the Award. While not directly involved in this case, they are involved in another proceeding and it is expected that they will be brought before this Court by petition for writ of certiorari in that proceeding. See fn. 1, at p. 2, *supra*.

Norris-LaGuardia Act and conflict in principle with decisions by this Court and by other courts of appeals. Consequently, we believe that the rulings below with respect to those issues deserve review by this Court.

A. *This Court Should Review the Holding that the Procedures Established by the Award for Changing Crew-Consist Rules Could Neither Be Initiated Nor Completed after Expiration of the Award and the Holding that Petitioners Could Be Required to Bargain under the Railway Labor Act during the Period of the Award upon Proposed Changes in Crew-Consist Rules.*

As we briefly demonstrate below, the Congress integrated its disposition of the crew-consist and firemen disputes arising out of the 1959 and 1960 Section 6 notices into the normal processes of the Railway Labor Act by providing for arbitration of those issues in accordance with the arbitration provisions of the Railway Labor Act. Hence, a determination of the effects of the expiration of the two-year period of the Award by Arbitration Board No. 282 basically involves an interpretation of the Railway Labor Act. While this was recognized by the court below and some of its rulings correctly applied the provisions of the Railway Labor Act to some aspects of the situation existing upon expiration of Award 282, other rulings by that court incorrectly interpreted and applied the provisions of the Railway Labor Act to other aspects of that situation.

1. *The Congress adopted the provisions of the Railway Labor Act.* When a nationwide railroad strike was threatened following exhaustion of the procedures of the Railway Labor Act with respect to the Section 6 notices served in 1959 a 1960 (see pp. 4-6, *supra*), the President urged that the Congress act to prevent such a disaster and his Administration submitted a bill (H.J. Res. 565 and S.J. Res.

102, 88th Cong., 1st Sess.) for that purpose. The Administration's bill provided for regulation by the Interstate Commerce Commission of all the issues raised by the 1959 and 1960 Section 6 notices, through interim rules that would "remain operative until the parties reach agreement regarding the matter involved, or if no agreement is reached, for two years following the date the interim rules goes into effect." The bill did not provide for disposition of the Section 6 notices. Rather, it provided for "continued collective bargaining" upon those notices and that, if no agreement was reached prior to expiration of the I.C.C. rules, the President should report to the Congress "and make such further recommendations, if any, as he deems appropriate, including his recommendation as to whether this joint resolution should be extended."[7]

Under the Administration's bill, therefore, the parties would have been required to continue bargaining upon the 1959 and 1960 Section 6 notices during the period of I.C.C. regulation; if no agreement disposing of the dispute was reached in that bargaining, the Section 6 notices would remain outstanding and the parties once again would be free to engage in self help upon expiration of the I.C.C. regulations unless additional legislation was enacted. This was confirmed by testimony in the committee hearings (which were exclusively devoted to the Administration's bill) by the Secretary of Labor and others. The Secretary acknowledged, however, that a nationwide railroad strike would be as intolerable at the later time when the I.C.C. regulations expired as it was then and believed that the

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[7] The Administration's bill is set forth in the Hearings on H.J. Res. 565 before the House Committee on Interstate and Foreign Commerce, 88th Cong., 1st Sess. (hereinafter referred to as "House Hearings") at 1-3, and in the Hearings on S.J. Res. 102 before the Senate Committee on Commerce, 88th Cong., 1st Sess. (hereinafter refered to as "Senate Hearings"), at 1-3.

President would recommend an extension of the legislation when he reported to the Congress as required by the Administration's bill, if the parties did not dispose of the dispute by agreement. See, *e.g.*, House Hearings, at 55-56, 59-60, 64-65, 69, 81, 107, 109, 114, 565; Senate Hearings, at 49-51, 54-56, 61, 63, 81, 364, 370-371, 375.

The congressional committees, however, were not satisfied with the Administration's bill. They did not share the Administration's optimism that an agreement disposing of the dispute would be reached during the period of I.C.C. regulation, and they believed (S. Rept. No. 459, 88th Cong., 1st Sess., at 10) that:

> "A failure to provide for a complete solution which would terminate the dispute at this time might well result in the necessity for a resumption of Congressional activity in a few months time. The committee has sought to avoid this possibility, both because of its distaste for legislating solutions to labor-management disputes and because of the obvious dangers of repeated congressional intervention in this field."

Accordingly, the committees revised the bill so as to "adopt the time-tested provisions of the Railway Labor Act" (*id.*, at 3) in disposing of the key issues in dispute, and it was the bill as thus revised which was enacted by the Congress.

Thus, P.L. 88-108 did not provide for I.C.C. regulation, but (§ 4) for arbitration of the crews-consist and firemen issues which "shall be conducted pursuant to sections 7 and 8 of the Railway Labor Act" to the extent possible, with the arbitration award being "made and filed as provided in said sectons and . . . subject to section 9 of said Act." Under Sections 7 and 8 of the Railway Labor Act, the parties by agreement may submit labor disputes to binding arbitration. 45 U.S.C. §§ 157, 158. In the preamble

to P.L. 88-108, the Congress noted that the parties had agreed in principle to arbitration of the disputes arising out of the 1959 and 1960 Section 6 notices, but had been "unable to agree upon the terms and procedures of an arbitration agreement." In effect, therefore, the Congress wrote an arbitration agreement for the parties. See *Brotherhood of Loc. Fire. & Eng.* v. *Chicago, B. & Q. R. Co.*, 225 F. Supp. 11, 18 (D. D.C., 1964), aff'd *per curiam*, 331 F. 2d 1020 (D.C. Cir., 1964). In addition, P.L. 88-108 omitted the requirement in the Administration's bill for continued collective bargaining upon the crew-consist and firemen aspects of the 1959 and 1960 Section 6 notices,[8] and provided instead (§ 3) that the award by the arbitration board would constitute a "complete and final dispositon" of those aspects of the Section 6 notices.[9]

By thus adopting the "time-tested provisions of the Railway Labor Act," the Congress must have intended that the situation following the expiration of the two-year period of Award 282 should be the same as that which follows the expiration of a collective bargaining agreement or arbitration award arrived at under the Railway Labor Act. As the floor manager (Representative Harris) of the legislation explained in the House debates: "The resolution provides that on the two major issues, the order of the arbitration board would be in force for a period of 2 years. Then the issues go back under the regular es-

[8] Section 6 of P.L. 88-108 provided for a resumption of collective bargaining upon the other aspects of the Section 6 notices, and they were disposed of by an agreement entered into on June 25, 1964 (JA 8, 22).

[9] In thus disposing of the Section 6 notices, the Congress avoided the situation which would have existed under the Administration's bill following the expiration of the I.C.C. regulations whereby those notices would have remained outstanding (unless disposed of by agreement) so as to permit the parties to engage in self help with respect thereto. Hence, no one contends that upon expiration of Award 282 the carriers could implement their 1959 Section 6 notices or that the unions could strike to coerce acceptance of the proposals in their 1960 Section 6 notices.

tablished procedures of collective bargaining." 109 Cong. Rec. 16128; see, also, *id.*, at 16130. Of course, the "regular established procedures of collective bargaining" in the railroad industry is provided by the Railway Labor Act. This principle was recognized by the court below, which stated, among other things, that (App. E, at 50a): "In essence then we have a mechanism tantamount to an arbitration agreement, albeit one drafted by Congress, that confers on the arbitrator the power to impose a settlement binding for up to two years. It becomes appropriate, then, to consider what would have been the rights and duties of the parties if they had themselves written the arbitration agreement."

2. *Under the Railway Labor Act, the rights and duties of the parties to a collective bargaining agreement or arbitration award continue after its termination date until changed in accordance with the Act.* While the Railway Labor Act does not require agreement upon proposed changes in rates of pay, rules or working conditions, it provides procedures that "are purposefully long and drawn out, based on the hope that reason and practical considerations will provide in time an agreement that resolves the dispute." *Railway Clerks* v. *Florida E.C.R. Co.*, 384 U.S. 238, 246 (1966). The Act thereby provides "a framework for peaceful settlement of labor disputes between carriers and their employees to 'insure to the public continuity and efficiency of interstate transportation service, and to protect the public from the injuries and losses consequent upon any impairment or interruption of interstate commerce through failures of managers and employees to settle peaceably their controversies.' H.R. Rep. No. 328, 69th Cong., 1st Sess., p. 1." *Union Pacific R. Co.* v. *Price*, 360 U.S. 601, 609 (1959).

The keystone of the procedures thus established is the

requirement in Section 6 that a carrier or union "shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions. . . ." It is the service of such a notice which calls into play the further requirements for conferences, mediation by the National Mediation Board, a proffer of voluntary arbitration, and, in the President's discretion, an investigation by an emergency board. 45 U.S.C. §§ 155-160. The disputes thus created are settled either by a new collective bargaining agreement or by an agreement to submit the dispute to binding arbitration under Sections 7 and 8 of the Act. If either party subsequently desires to change the new agreement or the arbitration award pursuant to the arbitration agreement, the procedures required by the Act must be reinstituted through the service of another Section 6 notice.

Obviously, the parties should not be permitted to short circuit this statutory procedure and put themselves into a position to strike or engage in other self help without exhausting that procedure, merely by providing in a collective bargaining agreement or arbitration award that it shall terminate on a specified date. Cf., *Felter* v. *Southern Pacific Co.*, 359 U.S. 326, 336 (1959). Rather, as was held in *Manning* v. *American Airlines, Inc.*, 329 F. 2d 32, 34 (2d Cir., 1964), the "effect of § 6 is to prolong agreements subject to its provisions regardless of what they say as to termination," until they are changed pursuant to new Section 6 notices and the other procedures required by the Act. See, also, *United Indus. Wkrs. of Seafarers, Etc.* v. *Board of Trustees*, 351 F. 2d 183, 190, fn. 26 (5th Cir., 1965).

This basic principle was recognized by the court below. In its initial opinion, that court rejected the unions' contention that the rules and agreements in effect prior to

Award 282 automatically were restored upon expiration of the Award, because (App. E, at 45a-46a):

> "We think the mere limitation of the effective period of the Award neither implies nor compels the construction the unions seek. Our ruling is that the work rules created by the Award constituted a new plateau that was not automatically eroded when the Award expired. The legal underpinning for our ruling is not the Joint Resolution, which expired after 180 days of life—except insofar as necessary to sanction the Award. The ruling is not based on the Award, which had only a 2-year life, or on any agreement of the parties. The predicate of our ruling is, simply, the force of the Railway Labor Act. Certain work rules were in force on [the day the Award expired]. The mandate of the Railway Labor Act requires that the work rules in effect on any particular day shall also be in effect the following day—beyond the power of either party to institute a unilateral modification—subject to change only in accordance with the procedures prescribed by the Act. These procedures begin with the notices required by Section 6 to be served by any party seeking a change at least thirty days in advance of the proposed effective date of such change. This new-plateau reasoning applies even though the work rules are established by agreements of limited duration. 'The effect of § 6 is to prolong agreements subject to its provisions regardless of what they say as to termination.' [Citing *Manning* v. *American Airlines, Inc.*, 329 F. 2d 32, 34 (2d Cir., 1964).] It likewise applies even though the work rules are established by an arbitration award of limited duration."

This ruling was clearly correct insofar as it held that the rules established by or pursuant to Award 282

continued to apply after expiration of the Award, by "force of the Railway Labor Act," until changed in accordance with that Act. But the court's use of the term "work rules" gave some reason to believe that the court had a mistaken impression of the scope of Section 6 which applies not just to changes in "rules," but to changes in "agreements affecting . . . rules. . . ." This was confirmed by the court's supplemental opinion, which held (App. F, at 76a-77a) that the procedures for changing crew-consist rules established by Award 282 could neither be initiated nor completed after expiration of the Award. Thus, according to the court below, the crew-consist agreements and special board awards made pursuant to those procedures during the period of the Award and the provisions in the Award for the protection of the employees continue until changed in accordance with the Railway Labor Act, but the procedures themselves do not.

We submit that, in so ruling, the court below seriously misconstrued the scope of Section 6. As we have noted, Section 6 applies to "intended changes in agreements *affecting* rates of pay, rules, or working conditions" (emphasis added), and not merely to intended changes *in* rates of pay, rules, or working conditions. We think it obvious that an agreement or arbitration award establishing a procedure for changing crew-consist rules or other substantive "work rules" is one "affecting . . . . rules." If the parties to the dispute arising out of the 1959 and 1960 Section 6 notices had resolved that dispute by an agreement establishing a procedure comparable to that provided in Award 282, as they almost did, or if they had agreed to submit the dispute to arbitration, as they almost did, and the resulting arbitration award established such a procedure, there could hardly be any doubt about the fact that those procedures would continue to apply, by "force of the Railway Labor Act," after the termination

date of the agreement or arbitration award until changed in accordance with that Act. And, as we have shown, the Congress intentionally adopted the arbitration provisions of the Railway Labor Act and in effect wrote an arbitration agreement for the parties, so that Award 282 is the equivalent of an award pursuant to an agreement to arbitrate.[10]

We do not know of any other decision that has limited Section 6 to changes in substantive "work rules" (or substantive "rates of pay" and "working conditions") or even suggested that Section 6 should be so limited. Indeed, the *Manning* case which was relied upon by the court below did not involve a substantive "work rule," rate of pay or working condition, but a provision in an agreement establishing a procedure for the check-off of union dues, and the Second Circuit in that case held that the "effect of § 6 is to prolong *agreements* subject to its provisions regardless of what they say as to termination" (emphasis added). Conversely, where an agreement or arbitration award provides a procedure for changing existing rules, rates of pay or working conditions, such changes may be made pursuant to that procedure without resort to Section 6 and the other procedures established by the Act. Thus, in *Westchester Lodge 2186, Etc.* v. *Railway Express*

[10] In its supplemental opinion, the court below purported to rest its decision that the procedures established by the Award did not continue upon "an accommodation of the sometimes divergent directives of Public Law 88-108, Award 282, and the Railway Labor Act" (App. F, at 76a). The Court did not point to any "directives" in P.L. 88-108 or the Award which diverge from the "directives" of the Railway Labor Act, however, and we believe that we have demonstrated that the Congress in P.L. 88-108 adopted "the time-tested provisions of the Railway Labor Act" rather than diverging from that Act. Insofar as we are aware, there is nothing in P.L. 88-108, in its legislative history or in Award 282 which differentiates in any way between the provisions of the Award establishing procedures for changing crew-consist rules, the provisions of the Award establishing protections for the employees and the agreements and special board awards pursuant to the Award, insofar as this issue as to the situation following the expiration of the Award is concerned.

Agency, Inc., 329 F. 2d 748 (2d Cir., 1964), the court rejected a contention that the *status quo* provisions of Section 6 applied to a dispute over the transfer of certain employees from one seniority district to another. This was so because the collective bargaining agreement established a procedure whereby such transfers could be brought about through "conference and agreement between the management and the duly accredited representatives of the employees," and the carrier contended that the transfers had been authorized pursuant to that procedure. As the court pointed out, "an agreement made pursuant to a specific contract provision designed to cover the situation cannot fairly be termed an alteration of the collective agreement" so as to be subject to Section 6. *Id.*, at 752. And see, *e.g.*, *St. Louis S.F. & T. Ry. Co.* v. *Railroad Yardmasters of America*, 328 F. 2d 749, 752-753 (5th Cir., 1964).

Issues as to the scope of Section 6 perhaps most often arise in the context of a contention that a proposal in a Section 6 notice is not mandatorily bargainable because it does not affect rates of pay, rules or working conditions within the meaning of that Section. Such an issue was dealt with by the court below, in an aspect of its initial opinion which dealt with the consolidated case involving the firemen's provisions of the Award. The court there noted that the "scope of bargainability" under Section 6 "is extremely broad." App. E, at 61a. The opinion of this Court in *Telegraphers* v. *Chicago & N.W. R. Co.*, 362 U.S. 330 (1960), was relied upon for that proposition. In the *Telegraphers* case, this Court upheld the bargainability of a Section 6 notice proposing that no position in existence on a specified date "will be abolished or discontinued except by agreement between the carriers and the organization" (*id.*, at 332)—thus proposing to establish a "procedure" for negotiating outside the processes of the Railway Labor

Act concerning the abolition of such positions.[11] See also, *Railway Clerks* v. *Florida E.C.R. Co., supra* at 243, where this Court held that a Section 6 notice of a proposal to require six-months advance notice of layoffs and job eliminations created a major dispute under Section 6 of the Railway Labor Act and thus, in effect, that such a proposal is bargainable.

In short, under Section 6 of the Railway Labor Act as under the Labor-Management Relations Act, "[w]hether a contract should contain a clause fixing standards for such matters as work scheduling or should provide for more flexible treatment of such matters is an issue for determination across the bargaining table. . . ." *Labor Board* v. *American Ins. Co.*, 343 U.S. 395, 409 (1952). This Court expressly upheld the validity and bargainability of the carriers' 1959 Section 6 notices, including the proposal that management be given absolute discretion to determine crew consists. *Locomotive Engineers* v. *B. & O. R. Co.*, 372 U.S. 284 (1963). We think it inconceivable that the Court would have held those notices to be non-bargainable under Section 6 if they had provided for arbitration of proposed changes in crew consist not agreed to by the union, thus affording additional protections to the union in the manner afforded by Award 282. Yet, the logic of the ruling below that the procedures established by the Award are not continued by force of Section 6 until changed in accordance with the Railway Labor Act would demand a ruling that

[11] Of course, the fact that the procedure established by Award 282 provided for arbitration if the parties could not agree after negotiations is not material for present purposes. "The Railway Labor Act fosters no overriding policy or purpose which would deny enforcement of an agreement to arbitrate." *Brotherhood of Loc. Eng.* v. *Chicago & North Western Ry. Co.*, 314 F.2d 424, 433 (8th Cir., 1963). If anything, the provision for arbitration makes even more clear that the procedural provisions of the Award are provisions "affecting . . . rules" so as to come within the requirement of Section 6 that they cannot be changed except in accordance with the Railway Labor Act.

a Section 6 notice proposing to establish such procedures is not mandatorily bargainable.

We submit, however, that the ruling that the procedures established by the Award may neither be invoked nor completed after expiration of the Award is erroneous and conflicts in principle with decisions by this and other courts construing the scope of Section 6. The issue thus presented is important, both in terms of this case and in terms of the proper administration of the Railway Labor Act, and, we believe, should be reviewed by this Court.

3. *Under the Railway Labor Act, the purpose and effect of a termination date in a collective bargaining agreement or arbitration award is to preclude the parties from being required under the Act to bargain prior to such termination date about proposed changes in the agreement or award.* As we have shown, the expiration of a collective bargaining agreement or arbitration award under the Railway Labor Act does not terminate the rights and duties of the parties pursuant to such agreement or award. Thus, the purpose and effect of including a termination date in such an agreement or award is not to terminate the rights and duties of the parties thereunder. Rather, the purpose and effect of including a termination date is to establish a moratorium period in which the parties to the agreement or award cannot be compelled to bargain under the Railway Labor Act concerning proposed changes in the agreement or award. Such bargaining can be compelled only after the termination date.

In *Flight Engineers' Inter. Ass'n.* v. *American Airlines, Inc.*, 303 F. 2d 5 (5th Cir., 1962), appeal dismissed by stipulation, 314 F.2d 500 (5th Cir. 1963), for example, the carrier and union had entered into an agreement which was to terminate five years from its affective date. On the same day, they entered into a supplemental agreement which provided that "written notice of an intended change

in any provision could be served 30 days after the first anniversary of the first turbine aircraft in scheduled passenger service." *Id.*, at 7. The union served a Section 6 notice after the date specified in the supplemental agreement, but "the Carrier took the position that a number of [the union's] demands were actually covered by the terms of the basic agreement, and therefore not open for bargaining for 5 years." *Id.*, at 7.

The trial court enjoined a strike by the union pending a determination by an adjustment board, under Section 3 of the Railway Labor Act (45 U.S.C. § 153), of whether or not the union's demands were outside the scope of the reopening clause in the supplemental agreement, and the Fifth Circuit affirmed. In so doing, the Fifth Circuit rejected a contention that the carrier could be compelled to bargain prior to the expiration of the basic agreement even if the section 6 proposals related to matters covered by that agreement rather than by the supplemental agreement, stating (*id.*, at 13) that:

> "Again, without anticipating what the decision of the System Board of Adjustment on the merits (assuming it has jurisdiction) must be, this analysis rests on the premise that the law as such will give vitality to the duration clauses and correlative reopening clauses of labor contracts. The Union argues in effect that since no one in 1958 knew all the problems which would arise in the operation of jets, the Union could not foreclose its statutory right—and duty—to bargain when, and as, and as often as needed. But any such rule leads either to chaos or a demolition of the concept of industrial peace through labor contracts fairly arrived at."

So, too, in *Capitol Airways, Inc.*, v. *Air Line Pilots Ass'n*, 41 CCH Labor Cases ¶ 16,739 (MD. Tenn., 1961), the car-

rier and union executed an agreement containing a provision that it was to expire on June 30, 1961. The plaintiff contended that this was a "valid contract" and hence that it had "no duty to bargain with the defendant" union in regard to the employees covered by the contract "until the contract expires on June 30, 1961." The court stated that if the agreement was valid it follows "necessarily that the plaintiff is not required to bargain [with the union as representative of those employees] with respect to their terms and conditions of employment until the expiration of such agreement on June 30, 1961;" held that the agreement was valid, and granted a summary judgment for the plaintiff. See, also, *Rutland Ry.* v. *Brotherhood of Loc. Eng.*, 307 F.2d 21, 36 (2d Cir., 1962), where the court stated that: "We do not say that the issue in the present case is not a bargainable one. We have no doubt that the brotherhoods, upon the expiration of the existing agreements, may require the railroad to bargain. . . ."

Insofar as we are aware, there were no decisions to the contrary prior to the decision by the court below. While that court correctly held that the carriers were not required to bargain prior to the expiration of the Award upon the Section 6 notices served by the ORC&B, it erroneously held that the carriers were required to bargain prior to the expiration of the Award upon the Section 6 notices served by the BRT. App. E, at 47a-58a. The distinction drawn by the court below was that the ORC&B notices proposed changes in crew-consist rules to become effective during the period of the Award, while the BRT notices proposed changes in crew-consist rules to become effective the day after the expiration of the Award. Although the attempt by the ORC&B to ignore the Award altogether undoubtedly emphasizes the impropriety of its endeavor to proceed under the Railway Labor Act during the period

of the Award, we submit that the mere fact that the BRT specified an effective date immediately following the expiration of the Award did not entitle it to require the carriers to bargain over its Section 6 notices prior to the expiration of the Award.

In holding to the contrary, the court below relied heavily (App. E, at 48a-49a) upon testimony during the hearings upon the Administration's bill to the fact that bargaining upon the 1959 and 1960 Section 6 notices would continue during the period of I.C.C. regulation as required by that bill. But, as we have shown (pp. 12-16, *supra*), the Administration's bill was revised to eliminate the requirement for such bargaining and the Congress, instead, provided in P.L. 88-108 for a "complete and final disposition" of the 1959 and 1960 notices through arbitration in accordance with the Railway Labor Act. And, as we have further demonstrated (pp. 23-25, *supra*), the purpose and effect of a termination date in an agreement or arbitration award under the Railway Labor Act is to assure that one party cannot reopen the dispute so as to compel further bargaining under the Railway Labor Act prior to that termination date. "*Then* the issues go back under the regular established procedures of collective bargaining" (emphasis added), as the House was informed by Representative Harris (see pp. 16-17, *supra*).

But for this aspect of the "time-tested provisions of the Railway Labor Act" which the Congress adopted in P.L. 88-108, the Congress could not have been assured of avoiding the possibility, which it found to be an objectionable feature of the Administration's bill (see p. 14, *supra*), of being faced with a renewed threat of a railroad strike and a consequent demand for further legislative intervention, within a relatively short time. Otherwise, the unions could have placed themselves in a position to strike

immediately upon expiration of the Award by exhausting the procedures of the Railway Labor Act during the period of the Award with respect to Section 6 proposals such as those served by the BRT. Plainly, this was not intended by the Congress.

A. *This Court Should Review the Holding that Section 8 of the Norris-LaGuardia Act Invalidated A Temporary Restraining Order Entered by the District Court.*

The trial court temporarily restrained the respondent unions from striking over their demand that the rules and agreements in effect prior to the Award be restored upon expiration of the Award, pending a hearing upon a motion for a preliminary injunction. The court below held that this action was erroneous, insofar as the BRT was concerned, since the carriers had not complied with Section 8 of the Norris-LaGuardia Act (29 U.S.C. § 108), which provides that:

> "No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

In view of the court's holding that the carriers were required during the period of the Award to bargain upon the Section 6 notices served by the BRT, by refusing to do so they "failed to comply with any obligation imposed by law which is involved in the labor dispute in question" according to the court below. Consequently, if that court

erred in holding that the carriers had a duty to bargain upon the BRT notices during the period of the Award, it also erred in holding that the temporary restraining order was invalid insofar as it applied to the BRT. But there is a far more fundamental reason why the latter holding is in error: neither Section 8 nor any other provision of Norris-LaGuardia applies to a restraining order or other injunctive relief designed to compel compliance with a mandate of the Railway Labor Act.

Section 4 of the Norris-LaGuardia Act deprives the federal courts of jurisdiction to enjoin certain specified activities in connection with labor disputes subject to the Act, including "[c]easing or refusing to perform any work or to remain in any relation of employment;" *i.e.*, strikes, 29 U.S.C. § 104. Sections 7, 8 and 9 establish procedural requirements applicable to requests for injunctive relief in labor disputes subject to the Act with respect to activities as to which all jurisdiction to issue such relief has not been withdrawn by Section 4. In addition to the requirements of Section 8 quoted above, Section 7 requires findings of fact as to a number of specified matters based upon testimony in open court (29 U.S.C. § 107), and Section 9 limits the scope of any injunctive relief to the specific acts found to be illegal (29 U.S.C. § 109).

The court below was "clear that the District Court was correct in holding that it had jurisdiction to enjoin a violation of the Railway Labor Act, and that this jurisdiction was not negatived by or subject to Section 4 of the Norris-LaGuardia Act" (App. F, at 86a). But, the court below also held that this Court, in *Trainmen* v. *Chicago, R. & I.R. Co.*, 353 U.S. 30 (1957) (the *Chicago River* case), has established a "principle of accommodation" between the two statutes which "means that actions to enjoin violations of the Railway Labor Act may be maintained without regard

to Section 4 of the Norris-LaGuardia Act, and yet be subject to Section 8 of that Act" (App. F, at 87a). We believe that this latter holding represents a misunderstanding of the *Chicago River* opinion, and is contrary to the holding in that and numerous other cases.[12]

It is quite true that this Court in its *Chicago River* opinion stated that there "must be an accommodation" of the Norris-LaGuardia and Railway Labor Acts (353 U.S., at 40), but the "accommodation" to which this Court referred did not involve picking and choosing among the various provisions of Norris-LaGuardia. Indeed, this Court in that opinion did not single out for mention any particular provision of Norris-LaGuardia, much less analyze the various provisions in some attempt to determine which must apply and which should be disregarded so as to "accommodate" that Act with the Railway Labor Act. The accommodation which this Court made, upon the basis

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[12] Of the cases cited by the court below (App. F. at 87a, fn. 4) for the proposition that other courts have reached the same conclusion regarding the applicability of Section 8, only the *Rutland Ry.* case actually did so. The *Chicago, Rock I. & Pac. R.R.* case held Section 4 of Norris-LaGuardia to be applicable because the plaintiff had not shown a violation of the Railway Labor Act by the defendant, as did the *Elgin, J. & E. Ry.* case. The *Manning* case found that the plaintiff had complied with Section 8, without determining whether that was necessary. In the *Toledo, P. & W. R.R.* case, the procedures of the Railway Labor Act had been exhausted with respect to a major dispute so that the strike did not violate the Railway Labor Act. Rather, the plaintiff sought to enjoin violence pursuant to the Norris-LaGuardia Act itself and Section 8 concededly applied to any such injunction. The only issue was whether Section 8 had been complied with. The footnote in the *Florida E.C. Ry.* case was addressed to a similar assumed situation. The *Chicago & Nw. Ry.* case is contrary to the decision below. In that case, the Eighth Circuit pointed out (354 F.2d, at 794, fn. 8) that "even if the Norris-LaGuardia Act were held to apply in this case, it is arguable that at least the requirements of §8 of that Act had been met by the carrier," but held that in any event "the more specific and later-enacted Railway Labor Act must prevail to allow the issuance of the injunction" (354 F.2d, at 796) even if the carrier did not comply with the procedural requirements of Sections 7, 8 or 9 of Norris-LaGuardia.

of the legislative history of Norris-LaGuardia [13] and its prior decisions,[14] was that "the specific provisions of the Railway Labor Act take precedence over the more general provisions of the Norris-LaGuardia Act," so that "the District Court has jurisdiction and power to issue necessary injunctive orders [to enforce compliance with the requirements of the Railway Labor Act] notwithstanding the provisions of the Norris-LaGuardia Act." 353 U.S., at 42 (bracketed insert in the original).

In short, none of the provisions of Norris-LaGuardia apply to an injunction requiring compliance with the mandates of the Railway Labor Act. On the other hand, if no violation of the Railway Labor Act is involved, the fact that the labor dispute involves a carrier subject to that Act does not prevent Norris-LaGuardia from applying.[15]

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[13] See, *e.g.*, the following colloquy in the House debates over Norris-LaGuardia:

> "Mr. Lankford of Virginia. • • • Will the gentlemen answer this question? Does this make it possible for lack of an injuction to tie up railroads and prevent them from transporting milk, for example?
>
> "Mr. LaGuardia. I think the gentleman was a member of the House in 1926?
>
> "Mr. Lankford. No.
>
> "Mr. LaGuardia. We then passed the railroad labor act, and that takes care of the whole labor situation pertaining to railroads. They could not possibly come under this for reason that we provided the machinery there for settling labor disputes." 75 Cong. Rec. 5499.

[14] *Railroad Trainmen* v. *Howard*, 343 U.S. 768, 774 (1952); *Graham* v. *Brotherhood of Firemen*, 338 U.S. 232, 237-240 (1949); *Tunstall* v. *Brotherhood*, 323 U.S. 210 (1944); *Steele* v. *L. & N. R. Co.*, 323 U.S. 192 (1944); *Virginian Ry.* v. *Federation*, 300 U.S. 515, 563 (1937). See, also, *Locomotive Engrs.* v. *L. & N. R. Co.*, 373 U.S. 33, 42 (1963); *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 458 (1957). In *United States* v. *Mine Workers*, 330 U.S. 258, 290 (1947), this Court held that, where the applicability of Norris-LaGuardia is in issue, a "District Court unquestionably [has] the power to issue a restraining order for the purpose of preserving existing conditions pending a decision upon its own jurisdiction."

[15] For example, Norris-LaGuardia applies when the procedures of the Railway Labor Act have been exhausted in a major dispute, so that the

While most of the cases (as *Chicago River*) simply hold Norris-LaGuardia to be inapplicable to injunctions requiring compliance with the mandates of the Railway Labor Act, without referring to any particular provisions of Norris-LaGuardia,[16] this Court's earliest decision in this area expressly rejected a contention that Section 9 of Norris-LaGuardia applies in such circumstances. *Virginian Ry.* v. *Federation, supra* at 562-563. The applicability of Section 7 also has been rejected. *Missouri-Kansas-Texas R. Co.* v. *Brotherhood of Loc. Eng.*, 266 F. 2d 335, 339-340 (5th Cir., 1959), rev'd on other grounds, 363 U.S. 528 (1960); cf., *Textile Workers* v. *Lincoln Mills, supra* at 457-459, in which this Court expressly rejected the applicability of Section 7 to an injunction requiring compliance with the mandates of the Labor-Management Relations Act.

Finally, in square conflict with the court below, the Tenth Circuit has specifically held Section 8 of Norris-LaGuardia to be inapplicable to injunctions requiring compliance with the mandates of the Railway Labor Act. *Brotherhood of Railroad Train.* v. *Denver & R. G. W. R. Co.*, 290 F. 2d 266, 270 (10th Cir., 1961), as follows:

> "It is urged that the injunction entered in this case is prohibited by Section 8 of the Norris-LaGuardia Act. . . . We think this question was answered in the case of Brotherhood of Railroad Trainmen v. Chicago River & I.R.R., [353 U.S. 30], in which it was held that the general terms of the Norris-LaGuardia Act could

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parties are free to strike or resort to other self help without violating that Act. See *Telegraphers* v. *Chicago & N.W. R. Co.*, 362 U.S. 330 (1960); *Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U.S. 50 (1944); fn. 24 to this Court's opinion in the *Chicago River* case, 353 U.S., at 42.

[16] This Court so held in *Graham* v. *Brotherhood of Firemen, supra*, even though counsel for the union urged that Sections 7 and 8 of Norris-LaGuardia were applicable and had not been complied with, even if Section 4 were inapplicable. Brief for Respondent, at 16-17.

not be read alone in matters dealing with railway labor disputes, and that it did not prevent injunctions to prohibit strikes growing out of minor disputes which were specifically dealt with in the Railway Labor Act."

Accord, *Brotherhood of Railroad Carmen* v. *Chicago & N.W. Ry. Co.*, 354 F. 2d 786, 789-796 (8th Cir., 1965), which is discussed in fn. 12, p. 29, *supra*.

The decision below on this issue has little immediate importance to the parties. The temporary restraining order expired long ago by its own terms, and the carriers did not press their demand for further injunctive relief in view of the manner in which the case developed in the trial court. See pp. 9-10, *supra*. Thus, we urged to the court below that the issue was moot,[17] but that court thought that the BRT might possibly be able to prove some damages caused by the restraining order which would be recoverable upon the $10,000 bond posted pursuant to that order. App. F, at 86a-87a. But the principles declared by the court below are of considerable general importance in the administration of the Norris-LaGuardia and Railway Labor Acts, and, as we have shown, conflict with principles declared by this Court and other courts of appeals. In these circumstances, review of the issue by this Court appears to us to be fully justified.

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[17] See *Benitez* v. *Anciani*, 127 F.2d 121, 125 (1st Cir., 1942); *Southard & Co.* v. *Salinger*, 117 F.2d 194, 196 (7th Cir., 1941).

Conclusion

For the reasons stated above, this petition for writ of certiorari should be granted.

Respectfully submitted,

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